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ABSTRACT

This paper traces the evolution of student rights and the judicial protection of these rights through numerous court cases. The author outlines the minimum standards of due process required in disciplinary proceedings and discusses cases that point up (1) the required specificity of rules on student conduct, (2) the requirements of notice to student and parents, (3) the right to a fair hearing, (4) the right to counsel, (5) the right to inspect evidence, (6) the right to have an impartial trier of fact at a hearing, (7) the right to cross-examine and confront witnesses, and (8) the right to protection against self-incrimination. The author recommends that schools provide a grievance procedure for students and faculty and that they establish written regulations on student conduct as well as written procedures for handling discip'ine cases. He also recommends that schools have emergency plans to deal with school disorders. (JF)

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THE COURTS AND STUDENT RIGHTS - PROCEDURAL MATTERS*

by

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"The history of liberty has largely been the history of observance of procedural safeguards."[1]

Until recently, few procedural requirements were placed upon the school when it decided to suspend or expel a student. Education was considered a privilege, not a right, and school expulsions were generally not reviewed by the court.

Today education is considered a right that cannot be denied without proper reason and unless proper procedures are followed.[2] Courts now require that students be accorded minimum standards of fairness and due process of law in disciplinary procedures that may terminate in expulsion. Minimum standards in cases of severe discipline of students are generally thought to include (1) an adequate notice of the charges against the student and the nature of the evidence to support those charges, (2) a hearing, and

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[1]Felix Frankfurter in McNabb v. United States, 318 U.S. 332, 347 (1943).

[2]See e.g., Alexander v. Thompson, 313 F.Supp. 1389 (C.D. Cal. 1970), which held that public education is a legal right protected by the equal protection and due process guarantees and that, at a minimum, denial of public education not be arbitrary; Crews v. Clones, 432 F.2d 1259 (7th Cir. 1970)("hair-case"; "state does not possess an absolute right to refuse opportunities such as education in public schools...."); Conyers v. Glenn, 243 So.2d 204 (Fla. Dist. Ct. of App. 1971) (Suspended student entitled to due process).

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(3) an action that is supported by the evidence.[3]

To determine the procedural requirements on the school when it contemplates a lengthy suspension or expulsion, one begins with the state statutes. Before the school can expel a child, the statutes may require a hearing (as they do in Massachusetts, New York, and Pennsylvania) or some other procedural observance, such as New York's requirement of notice, representation by legal counsel, and right to question witnesses against the pupil.

Once the requirements of the state statutes are known, the next step is to determine the additional requirements imposed by the state and federal constitutions. Since most state statutes say nothing about the procedure to be followed by a school administrator or school board before it expels a student, we are dealing almost exclusively with constitutional requirements--primarily the Fourteenth Amendment to the United States Constitution, which provides that no person shall be deprived of "life, liberty, or property, without due process of law." The third step, then, is to determine what

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[3]See Dixon v. Alabama State Bd. of Educ. 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930 (1961); Buttny v. Smiley, 281 F.Supp. 280 (D. Colo. 1968); and GENERAL ORDER ON JUDICIAL STANDARDS OF PROCEDURE AND SUBSTANCE IN REVIEW OF STUDENT DISCIPLINE IN TAX SUPPORTED INSTITUTIONS OF HIGHER EDUCATION, 45 F.R.D. 133, 147 (W.D. Mo. 1968). Both the cases and the GENERAL ORDER concerned the procedural rights of university students. Most of the cases concerning procedure and requirements of due process have involved college students. Although some aspects of these cases are not transferable to the public school setting, many of them are. On the question of what procedures are absolutely necessary before the student can be expelled, there is little basis to think that the fundamental requirements of notice, hearing, and sufficient evidence do not apply equally to public school expulsions. See Sullivan v. Houston Independent School District, 307 F.Supp. 1328, 1342-43 (S.D. Tex. 1969), and Vought v. Van Buren Public Schools, 306 F.Supp. 1388, 1393 (E.D. Mich. 1969), which applied the Dixon procedural requirements directly to high school expulsion cases. See also Van Alstyne in STUDENT PROTEST AND THE LAW 207 (G. Holmes ed. 1969). Judge Cummings of the Eastern District of Illinois, however, observed that "[G]reater flexibility may be permissible in regulations governing high school students than college codes of conduct because of the different characteristics of the educational institutions, the differences in the range of activities subject to discipline, and the age of students." Whitfield v. Simpson, 312 F. Supp. 889, 898 (E.D. Ill. 1970) (dissenting opinion). The Seventh Circuit subsequently stated, in dicta, "...we are of the view that the considerations suggested by Judge Cummings in Whitfield...may permit considerably under latitude to high schools [as opposed to colleges under Dixon] in fashioning disciplinary procedures." Crews v. Clones, 432 F.2d 1259, 1263 n.5 (7 Cir. 1970).

due process means with respect to student suspensions and expulsions. Here one must examine the judicial opinions on the subject.

Before examining these opinions, I should note that due process requirements do not impose any particular model on the school disciplinary procedure. Due process is a flexible concept; whether it is afforded in a particular case depends on the circumstances of that case. "The touchstones in this area are fairness and reasonableness."[4]

In cases of student discipline, the exactness and formality of the procedure are directly proportional to the seriousness of the sanction that may be imposed. Thus, if the only penalty that may be given is a spanking or a detention after class, no formal procedure is required.[5] Only in serious discipline cases involving long-term suspensions and expulsions is the school legally obligated to provide the student with such guarantees as a notice and a hearing and to take only actions supported by the evidence.[6]

An informal procedure, similar to those most schools now employ, is legally permissible in cases of long suspensions and expulsions if the student

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[4]See Due v. Florida A. and M. Univ., 233 F.Supp. 396, 403 (N.D. Fla. 1963); See and Hannah v. Larche, 363 U.S. 420, 442 (1960).

[5]See Sill v. Pennsylvania State University, 318 F.Supp. 608 (M.D. Pa. 1970) in which the court held that "being placed on probation or being denied certain school privileges does not...rise to the level of the deprivation of a right secured by the Constitution requiring judicial relief." However, a New York state court required at least an administrative, non-adversary hearing before a school could take away a student's athletic letter. O'Connor v. Board of Education, 65 Misc. 2d 40, 316 N.Y.S.2d 799 (Sup. Ct. 1970).

[6]See Farrel v. Joel, 437 F.2d 160, 162-63 (2nd Cir. 1971) in which the court found no right to a hearing where suspension was for only ten days and the student admitted she had violated a rule against sit-ins. But see Black Students, etc., ex rel. Shoemaker v. Williams, 317 F.Supp. 1211 (M.D. Fla. 1970), where a suspension for ten days is a suspension for a substantial period of time requiring a prior adversary hearing.

is fully aware of his rights and voluntarily chooses the informal type of procedure.[7] The courts also have not applied the more elaborate procedural requirements when the dismissal is based on academic or scholastic failings.[8] Thus only when the issue is misconduct and not academic failing, and when the possible consequence is a long-term suspension or expulsion, must the school provide the student with the opportunity to have the more elaborate and formal procedure.[9]

Specific Rules on Student Conduct

As a general rule, a school may expel a child for any conduct that would disrupt the educational process or endanger the health or safety of the pupils in the school system. From a legal standpoint, the expulsion

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[7]The student also may be held to have waived his right to a hearing if he refuses to follow school procedures. See Grayson v. Malone, 311 F. Supp. 987 (D.Mass. 1970) and Hatter v. Los Angeles City High School District, 310 F.Supp. 1309 (C.D. Cal. 1970). A hearing also may be held to be waived if the student brings suit after a tentative date for a hearing is proffered by school authorities, instead of confirming the hearing date. Flaherty v. Connors, 319 F.Supp. 1284, 1288 (D. Mass. 1970).

[8]See e.g., Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913). In cases involving college students, the courts have also refused to apply Dixon and its progeny to scholastic failings. See, e.g., Fiorino v. New England School of Law, (unreported 1st Cir. opinion on March 3, 1971) briefly summarized at 40 U.S. L.W. 3072 (June 18, 1971), cert. den. 40 U.S. L.W. 3156 (Oct. 12, 1971); Connelly v. Univ. of Vermont, 244 F.Supp. 156 (D. Vt. 1965); Mustell v. Rose, 282 Ala. 358, 367, 211 So.2d 489. 498 (1968); Militana v. University of Miami, 236 So.2d 162 (Fla. App. 1970), cert. den. 28 L.Ed.2d 245 (1971).

[9]There is perhaps some question whether a student is entitled to a hearing when the persons who exercise thepower to suspend or expel the student observe the misconduct personally. The school administrators claimed there was no right to a hearing in such a case in Black Students, etc. ex rel. Shoemaker v. Williams, 317 F.Supp. 1211, 1215 (M.D. Fla. 1970). The district judge, in no uncertain terms, ruled against them. That the matter is not so certain is demonstrated by Jeffers v. Yuba City Unified Sch. Dist., 319 F.Supp. 368, 370 (E.D. Cal. 1970), where suspended students were not deprived of due process when the school refused to give them an adversary hearing prior to suspension because it was "obvious" from looking at the students that they had violated a "long-hair" rule.

need not be pursuant to a regulation adopted by the school board.[10] However, an expulsion or suspension may be declared unconstitutional if the student could not reasonably have understood that his conduct was prohibited. In such a situation, he would not have been given adequate notice of the impropriety of his action before he committed it, and, consequently, a basic requirement of due process would have been denied him.

A recent California case yields an example of a rule that was too vague and therefore unenforceable. A student had been expelled for violating a rule prohibiting "extreme hair styles".[11] In overturning the expulsion, the court said that the regulation "totally lacks the specificity required of government regulations which limit the exercise of constitutional rights."[12] Similarly, a federal court in Wisconsin invalidated the expulsion of college students

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[10]Richards v. Thurston, 424 F.2d 1281, 1282 (1st Cir. 1970). ("[W]e would not wish to see school officials unable to take appropriate action in forcing a problem of discipline or distraction simply because there was no pre-existing rule on the books." See also, Pierce v. School Committee of New Bedford, 322 F.Supp. 957, 961-62 (D. Mass. 1971); Hasson v. Boothby, 318 F.Supp. 1183, 1188 (D. Mass. 1970) (Although in some cases a written rule might be required depending on the following factors: (1) whether the student knew beforehand the wrongfulness of his conduct and the clarity of the public policy involved; (2) the possible chill on First Amendment rights inherent in the situation; and (3) the severity of the penalty imposed, one year's probation for offense of being on school property with alcohol on breath does not require prior published rule).

[11]Meyers v. Arcata Union High School Dist., 269 Cal. App.2d 549, 75 Cal. Rptr. 68 (1969). Compare with Burpee v. Burton, 45 Wis. 150 (1878), an old case in which a student expulsion for "general bad conduct" was upheld. These two cases graphically show the change in the law. Claims that the rules are too vague are common and not always justified. See State v. Zwicker, 41 Wis. 2d 497, 164 N.W.2d 512 (1969), 32 A.L.R.3d 531, appeal dismissed 396 U.S. 26 (1969). See also Dunmar v. Ailes, 348 F.2d 51 (D.C. Cir. 1965); Pritchard v. Spring Branch Independent School Dist., 308 F.Supp. 570, 579 (S.D. Tex. 1970); and Freeman v. Flake, 320 F.Supp. 531 (D.Utah, 1970

[12]Meyers v. Arcata Union High School Dist. 269 Cal. App.2d 549, 75 Cal. Rptr. 68, 75 (1969). But see, Parker v. Fry, 323 F.Supp. 728 (E.D. Ark. 1970), where a rule prohibiting "extreme hair styles" was held not to be unconstitutionally vague especially since the student who had shoulder-length hair in fact had adequate notice of what was expected of him although the court finally held that the school rule was invalid for other reasons. See also Giangreco v. Center School Dist., 313 F.Supp. 776 (W.D. Mo. 1969). A similar rule was held unconstitutionally vague in Crossen v. Fatsi, 309 F.Supp. 114 (D. Conn. 1970) even though the student had received advance warning that he was violating the rule. (Continue Footnote 12 on next page)

for "misconduct" because the phrase was vague and too broad.[13] A helpful statement of what is required in specificity is provided in a recent Texas case. The court said "School rules probably do not need to be as narrow as criminal statutes but if school officials contemplate severe punishment they must do so on the basis of a rule which is drawn so as to reasonably inform the student what specific conduct is prescribed. Basic notions of justice and fair play require that no person shall be made to suffer for a breach unless standards of behavior have first been announced, for who is to decide what has been breached?"[14]

When First Amendment freedoms are involved, courts are particularly demanding in requiring specificity in a rule. For example, a regulation

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(continue n. 12)

A regulation requiring "modesty, appropriateness, and neatness in clothing and personal appearance" and stating that a student is "not appropriately dressed if he is a disturbing influence in class or school because of his mode of dress" served as a sufficient basis for the suspension of two long-haired students where the two individuals involved were certainly aware of what was expected of them and deliberately chose not to comply. Jackson v. Dorrier, 424 F.2d 213, 218 (6th Cir. 1970) cert. denied 400 U.S. 850 (1971). See also Conley v. Daunhauer, 312 F.Supp. 811 (E.D. Ark. 1970). Here, too, greater flexibility will be allowed at the high school level. Crews v. Clones, 432 F.2d 1259 (7th Cir. 1970); see note 3 supra.

[13]Soglin v. Kauffman, 295 F.Supp. 978 (W.D. Wis. 1968), aff'd. 418 F.2d 163 (7th Cir. 1969). "Gross disobedience" and "misconduct" were not unconstitutionally vague terms in Whitfield v. Simpson, 312 F.Supp. 889 (E.D. Ill. 1970). A less strict test of vagueness than is applied in criminal cases was applied in Sill v. Pennsylvania State University, 318 F.Supp 608 (M.D. Pa. 1970). One court refused to vacate on vagueness grounds the expulsion of a university student for behavior not "compatible with good citizenship." Stewart v. Reng, 321 F. Supp. 618 (E.D. Ark. 1970).

[14]Sullivan v. Houston Independent School District, 307 F.Supp. 1328, 1344 (S.D. Tex. 1969).

requiring a student to "conduct himself as a lady or a gentleman" is insufficient basis for many restrictions on student conduct, especially conduct that may involve expression of First Amendment freedoms.

Thus it is important that the school board adopt written regulations on student conduct and that these regulations be stated with as much clarity and detail as possible. School rules also should be publicized so that they reach all affected parties -- students, parents, and the community the school serves.

Notice

Proper notice in procedural due process places several requirements on the school. First, the school must forewarn the student of the type of conduct that, if engaged in, will subject him to expulsion. This aspect of notice was discussed in the preceding section.

Second, the school must present to the student accused of a violation and his parents a written statement specifying the charges against him and the nature of the evidence to support the charges on which the disciplinary proceeding is based.[15] Besides reciting the factual allegations against the student, the statement should refer to a specific rule or regulation that has been violated and state when and where the hearing is to be held.[16]

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[15]In Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 158 (5th Cir. 1961), the leading case in the area of procedural due process, the Fifth Circuit Ct. Court of Appeals said: "The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Educ[illegible] See, Accord, Sullivan v. Houston Independent School Dist., 307 F.Supp. 1328, 1343 (S.D. Tex. 1969) (written notice required) and Vought v. Van Buren Public Schools, 306 F. Supp. 1388, 1393 (E.D. Mich. 1969).

[16]In Pierce v. School Comm. of New Bedford, 322 F. Supp. 957, 962 (D. Mass. 1971), /a reference in a statement of charges that denial of readmission was based on student's "constant disruptions and disrespectful manner and behavior" and on fact that he was "insolent, defiant, disrespectful, insubordinate, and persistent in his general misconduct over an extended period of time" was adequate notice that his expulsion was keyed to his entire school career.

Although prior notice of the hearing is an absolute requisite for due process, the school discharges its responsibility if it honestly attempts to reach the student and his parents by telephoning him and sending a registered letter to his home. If the student cannot be reached because he has changed his address or is deliberately avoiding notification, he cannot later complain that he did not receive notice.[17]

Third, the school should allow the accused student some time to prepare for the hearing by scheduling it to take place several days after the student has been notified of the charges against him. Two days would probably be a minimum time between a notice and a hearing unless the student agreed to an immediate hearing.[18] One court recently held that a high school student be given a minimum of five days' notice before a hearing on his expulsion.[19]

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[17]See Wright v. Southern Texas Univ., 392 F.2d 728 (5th Cir. 1968).

[18]Whitfield v. Simpson, 312 F.Supp. 889 (E.D. Ill. 1970). But see a recent high school case, Hobson v. Bailey, 309 F.Supp. 1393 (W.D. Tenn. 1970), permitting a school to advise a student for the first time of the charges against him when he appears before the discipline committee. This procedure clearly is unfair and runs counter to most of the courts that have discussed the issue.

[19]Vought v. Van Buren Public Schools, 306 F.Supp. 1388, 1393 (E.D. Mich. 1969). See also Sullivan v. Houston Independent School District, 307 F.Supp. 1328, 1343 (S.D. Tex. 1969), where the court required in a high school case imposing severe discipline that the student and his parents be given "ample time before the hearing to examine the charges, prepare a defense and gather evidence and witnesses."

On the other hand, the student may not postpone the hearing until after a criminal proceeding pending against him is completed. In Pierce v. School Comm. of New Bedford, 322 F. Supp. 957, 962 (D. Mass. 1971), the student's request for a continuance until court proceedings ended was denied by board in light of fact court proceeding might take years. See also Jones v. Snead, 431 F.2d 1115 (8th Cir. 1970).

Fourth, the school must inform the student of his procedural rights before a hearing. This requirement can be accomplished by sending him, at the time he is notified of the charges, a printed statement outlining the procedure. It is good practice for the school to include in its student handbook a complete disciplinary and procedural code. Sending the student a copy of the handbook should satisfy this aspect of notice.

Since some if not most students will prefer a more informal procedure, a form on which the student can waive the formal process should accompany the statement of charges. If the student chooses the informal procedure, the school need not hold a formal hearing. However, the student should be given a reasonable period of time to consider whether he will waive the hearing, and his decision should be made only after consulting with his parents or guardians.

Hearing

The most fundamental aspect of procedural due process is the right to a fair hearing. Although the hearing need not adhere to the technical rules of a court of law, it must be conducted in accordance with the basic principles of due process of law.[20] These principles were spelled out as follows in Dixon v. Alabama State Board of Education,[21] the leading case in the area of student expulsion:

> The nature of the hearing should vary depending upon the circumstances of the particular case....[But] a hearing which gives the...administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved....[T]he rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college...[T]he student should

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[20]See Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970) cert. den., 400 U.S. 850 (1971); Southern v. Bd. of Trustees, 318 F.Supp. 355 (N.D. Tex. 1970); Davis v. Ann Arbor Pub. Sch., 313 F.Supp. 1217 (E.D. Mich. 1970); and Perlman v. Shasta Joint Junior College, 9 Cal. App.3d 873,88 Cal. Rptr. 563 (1970), for recent court decisions that did not require formal judicial-style hearings for discipline cases involving suspension or expulsion from school.

[21]294 F.2d 150, 158-59 (5th Cir. 1961).

> be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present...his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf.

Although the Dixon case concerned the expulsion of a college student, the procedural requirements enunciated by the court apply generally to secondary schools as well. Courts in Florida,[22] Michigan,[23] and New York[24] have recently held that the opportunity of a student facing expulsion to present his case before an impartial tribunal is a minimum requirement of judical fairness. Basic decency requires no less.

Right to Counsel

Although some schools have permitted students to have legal counsel at school disciplinary proceedings, most have not. This section raises two questions: First, does procedural due process require the school to permit the student to have legal counsel in a school disciplinary proceeding that might lead to serious sanctions? And second, should the school permit legal counsel when the student thinks only a lawyer can protect his interests?

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[22]Black Students ex rel. Shoemaker v. Williams, 317 F.Supp. 1211 (M.D. Fla. 1970); Conyers v. Glenn, 243 So.2d 204 (Fla. Dist. Ct. of App. 1971).

[23]Godsey v. Roseville Public Schools, ___F.Supp. ___ (E.D. Mich. 1970); Vought v. Van Buren Public Schools, 306 F.Supp. 1388, 1393 (E.D. Mich. 1969).

[24]Madera v. Board of Education, 267 F.Supp. 356 (S.D.N.Y. 1967), rev'd on other grounds, 386 F.2d 778 (2nd Cir. 1967), cert. denied, 390 U.S. 1028 (1968).

The cases are divided as to whether legal counsel is a requirement of procedural due process.[25] It is probably safe to say, however, that most courts today would not find that the student has an absolute constitutional right to legal counsel in a hearing that might result in expulsion. This conclusion assumes, however, that the hearing maintains a conference-like atmosphere with emphasis on finding the facts and not on prosecuting the student. It further assumes that the student is permitted to bring his parents (or other adult representatives if his parents are unable to properly advise and assist him) and that the school does not use a lawyer to present its case. Several cases have indicated that if the school uses a lawyer, the student must be permitted to have one also.[26] Otherwise, the proceeding would be unfairly stacked against the student, and a denial of due process.

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[25]The case most often cited to support the conclusion that procedural due process does not require that a secondary student be allowed legal counsel in an expulsion proceeding is Madera v. Board of Educ., 267 F.Supp. 356 (S.D.N.Y. 1967), rev'd, 386 F.2d 778 (2d Cir. 1967), cert. denied, 390 U.S. 1028 (1968). To interpret Madera as holding that legal counsel is not required in an expulsion proceeding is an error. Madera involved a guidance conference rather than an expulsion proceeding and regardless of its outcome the school had no authority to expel. For cases denying a student's request for legal counsel, see Cosme v. Board of Educ., 50 Misc.2d 344, 270 N.Y.S.2d 231 (Sup. Ct. 1966), aff'd mem., 281 N.Y.S.2d 970 (1967), and cases cited at note 78 infra. See generally Davis v. Ann Arbor Pub. Schools, 313 F.Supp. 1217 (E.D. Mich. 1970).

But see Goldwyn v. Allen, 54 Misc.2d 94, 281 N.Y.S.2d 899 (Sup. Ct. 1967), in which the court ordered the school to permit the student to have legal counsel in a secondary school expulsion hearing as a requirement of due process. See Comment, Due Process Does Not Require that a Student be Afforded the Right to Counsel at Public School Suspension Hearing, 22 RUTGERS L. REV. 342 (1968).

[26]See French v. Bashful, 303 F.Supp. 1333 (E.D. La. 1969); and Wasson v. Trowbridge, 382 F.2d 807, 812 (2d Cir. 1967).

Most of the litigation on student expulsions has come from the colleges. In most of these cases the colleges have permitted students to have legal counsel:[27] thus the question of the right to counsel has not usually been an issue. The trend in college rules governing disciplinary procedures is to permit students in expulsion cases to have legal counsel. Nevertheless, when the right to counsel has been denied by the college and the point litigated, most courts have ruled against a legal right to counsel.[28] However, as college disciplinary hearings become increasingly formal, courts likely will require colleges to permit legal counsel when the student requests it as a requirement of due process.[29]

As the due process concept is expanded, the courts likely will impose the same requirement on the public schools. The argument can be made that if the right to be represented by legal counsel is an emerging requirement of procedural due process at the college level, the need for an attorney is even greater at the secondary school level. In support of this argument, it can be noted that a public secondary education is more essential than a college

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[27] See, e.g., Buttny v. Smiley, 281 F.Supp. 280 (D. Colo. 1968); and Jones v. State Bd. of Educ., 279 F.Supp. 190 (M.D. Tenn. 1968), aff'd, 407 F.2d 834 (6th Cir. 1969), cert. dismissed, 397 U.S. 31 (1970), rehearing denied 397 U.S. 1018; In re Carter, 262 N.C. 260, 137 S.E.2d 150 (1964).

[28] See, e.g., Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Barker v. Hardway, 283 F.Supp. 228 (S.D. W.Va. 1968), aff'd per curiam, 299 F.2d 683 (4th Cir. 1968), cert. denied, 394 U.S. 905 (1969); Hutt v. Brooklyn College, 68 Civ. 691 (E.D.N.Y. July 30, 1968); Perlman v. Shasta Joint Junior College, 9 Cal. App. 3d 873, 88 Cal. Rptr. 563 (1970); and GENERAL ORDER ON JUDICIAL STANDARDS 45 F.R.D. 133, 147 (W.D. Mo. 1968). Other cases, however, have required legal counsel. See, e.g., Esteban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969), holding that a lawyer could advise a student but could not cross-examine or conduct defense; and French v. Bashful, 303 F.Supp. 1333 (E.D. La. 1969), permitting a lawyer when a college uses a senior law student to prosecute.

[29] Professor Charles Alan Wright thinks that there probably is a right to legal counsel in college disciplinary hearings at the present time. See Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1076 (1969).

education, that expulsion from public secondary school is more drastic than expulsion from college since educational opportunities are more seriously affected, and that the relative immaturity and unsophistication of the secondary school student make him less capable than a college student of presenting his own defense in a disciplinary hearing.[30]

The primary reason that schools object to granting a student's request to have legal counsel is the fear that his attorney will change the nature of the hearing. School authorities fear that the hearing will become less like a conference and more like a judicial proceeding, a change they want to avoid.

The presence of counsel also increases the time, cost, and work load of the disciplinary proceeding. If the student has legal counsel, the school authorities will think it necessary to bring in the school board attorney, to whom they probably will turn over much of the basic handling of the school's case. This development further adds to the judicial nature of the case. The school also may feel that it must obtain a disinterested lawyer or jurist to act as the presiding officer. The result is a more expensive and longer proceeding. Furthermore, if the student is permitted to have counsel, the next step is to provide indigent students with counsel, in the interest of fairness if not as a legal requirement. This additional step poses problems of cost, of finding lawyers trained to handle juvenile problems, and of dealing with people who are trained in adversary proceedings and often fail to recognize the rehabilitative aspects of the guidance conference.[31]

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[30]See Abbott, Due Process and Secondary School Dismissals 20 CASE W. RES. L. REV. 378, 397 (1969).

[31]See 42 N.Y.U.L. REV. 961 (1967). See also Isaacs, The Role of the Lawyer in Representing Minors in the New Family Court, 12 BUFFALO L. REV. 501 (1963).

These legitimate concerns of school authorities must be considered in conjunction with the student's need to have his interests protected by an adult at the expulsion hearing. In most cases, the student's parents or some other nonlawyer adult of his choosing, such as a social worker, guidance counselor, or minister, would probably satisfy the need to see that a fair hearing is conducted. However, if the student thinks that only legal counsel can properly represent him in an expulsion proceeding, I strongly recommend that the school permit him to be so represented. A refusal may appear to many as an admission by the school that its case is weak. By refusing a student's request for an attorney in an expulsion case, the school often stands to lose far more in the eyes of the community than it gains.

Inspection of Evidence

I know of no high school expulsion case in which the right to inspect the evidence against the student was in issue. As discussed earlier under the topic of notice, the student must be informed of the nature of the evidence against him. But as a concomitant to this fundamental requirement of due process, it seems only fair to permit the student to inspect before the hearing any affidavits or exhibits that the school plans to introduce at the hearing. The inspection privilege should extend not only to the evidence to be used against the student at the hearing, but also to the list of witnesses and copies of their statements.[32] The school's primary interest at the hearing is to determine the facts and to minimize the possibility of making a mistake about the student. Full inspection by the student of the

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[32]In two college cases in which the question of inspection was raised, both courts permitted it. The courts applied the traditional concepts of discovery in the practice of law and found discovery workable. See Esteban v. Central Miss State College, 277 F.Supp. 649 (1969), and Buttny v. Smiley, 281 F.Supp. 280 (D. Colo. 1968). But see Jones v. Snead, 431 F.2d 1115 (8th Cir. 1970) in which the Eighth Cir. refused to decide whether a junior college president improperly relied upon "secret" information in reaching a decision to suspend students until the district court made specific findings of fact and until it saw the suspension hearing transcript.

documents concerning his charged misconduct promotes these aims. Schools may, however, be obligated to protect faculty evaluations of other students' performances and behavior from inspection. Such records are usually considered confidential.[33]

Trier of Fact

A fair hearing presupposes that the accused student will have an opportunity to present his case before an impartial trier of fact.[34] The question is, What constitutes an impartial trier of fact? Clearly, the Sixth Amendment's requirement of a trial by an impartial jury, which is construed to mean a jury of one's peers, is not required in student disciplinary cases. The Sixth Amendment applies only to criminal prosecutions. Since a disciplinary hearing is a civil proceeding, reviewable in a court of law, the constitutional requirement of a jury trial has no application.

Nor need there be a hearing board or tribunal, though I strongly recommend that the school consider using a hearing panel for expulsion and suspension cases. Usually in these cases the principal has been the trier of fact, though most states require the superintendent or school board to approve expulsions and long-term suspensions. Generally the principal will have prior knowledge and contact, if not direct involvement, with the case. Not infrequently he will be the primary school official present when the infraction of school rules occurs, and it will be his testimony that determines whether the student is suspended or expelled.

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[33] In Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967), the court excluded faculty evaluations of students from records that could be inspected.

[34] Sullivan v. Houston School Dist., 307 F.Supp. 1328, 1343 (S.D. Ind. 1969); Leonard v. School Comm. of Attleboro, 349 Mass. 704, 212 N.E.2d 468 (1965). In Perlman v. Shasta Joint Junior College, 9 Cal. App. 3d 873, 88 Cal. Rptr. 563 (1970), a California court held that a showing of bias and prejudice on the part of the administrative body denied the student a fair hearing and thus violated due process of law.

Although I seriously question the soundness of the principal's being the trier of fact in any suspension or expulsion case in his school and strongly object to his assuming this role in expulsion cases in which he has had direct involvement, the commingling of the decisional and prosecutorial functions usually does not make the hearing invalid. Unless it can be shown that the principal's involvement has prejudiced him so that he cannot impartially and fairly consider the evidence, courts are unlikely to overturn the expulsion.[35] However, the student should be entitled to have a different trier of fact, or member of a panel, if he can show that the trier has bias, malice, or personal interest in the outcome of the case. The opportunity to prove bias satisfies the constitutional requirement for an impartial trier of fact.[36]

Cases will arise in which the principal is so closely connected with the student hearing that he should not, in my opinion, serve on the tribunal. A student expulsion case on the college level is an example of such a case. Students at Oshkosh State University faced expulsion on charges of breaking into the president's office, threatening him, and holding him prisoner. Under the university's rules, the president considers appeals from student discipline cases and makes recommendations to the board of regents. In this case, however,

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[35]Two recent cases have found that prior involvement by the principal in a discipline case made it improper for him to be the hearing officer. See Beahm v. Grile, ___ F.Supp. ___ (N.D. Ind. 1971) and Matter of Jean Dishaw, 10 Ed. Dept. Rep. ___ N.Y. Comm'r. Decision No. 8176.

In several college discipline cases that have considered the matter of combining decisional and prosecutorial functions in an expulsion procedure, courts have permitted the functions to be combined. They have reasoned that it is difficult and burdensome, and sometimes impossible, to obtain a panel whose members have had no previous contact with the case. See, e.g., Jones v. State Bd. of Educ., 407 F.2d 834 (6th Cir. 1969), cert. dismissed, 397 U.S. 31 (1970), rehearing denied 397 U.S. 1018 (1970); Wasson v. Trowbridge, 382 F.2d 807, 813 (2d Cir. 1967); Wright v. Texas Southern Univ., 277 F.Supp. 110 (S.D. Texas 1967).

[36]Where the student himself advances evidence at a hearing which may prejudice the school board against him (such as showing that he once distributed literature labeling a member a "fascist pig"), the board should not be disqualified. Pierce v. School Comm. of New Bedford, 322 F.Supp. 957, 962 (D. Mass. 1971).

the regents wisely excused the president from participation in the hearing and obtained the services of a former state supreme court justice to conduct the hearings and make recommendations.[37] This procedure represents a fair and easy way to eliminate conflicts of interest. Even if the president in this situation could have been fair in his judgment, the school avoided the likely accusation that it had not provided an impartial tribunal.

The same considerations apply to public school expulsions. Although not required by law, the best procedure in expulsion cases in which the principal has been a direct participant in the actions that are the basis for the expulsion is to have a member of the school's faculty or, preferably, a panel consisting of a teacher, parent, and student to serve as trier of fact.

Witnesses--Cross-Examination, Confrontation, and Compulsory Production

In criminal prosecutions and in most administrative proceedings, the defendant may confront and cross-examine witnesses testifying against him, call his own witnesses, and compel witnesses to attend the trial or hearing. In a student disciplinary hearing, the student certainly may call his own witnesses. The procedure would be a charade if the student did not have this right.[38] However, there is considerable question over the student's rights to confront and cross-examine witnesses and to compel his own witnesses to attend the hearing.

Compelling the attendance of witnesses may be beyond the power of the school, though some states grant general subpoena power to school boards.[39]

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[37]Marzette v. McPhee, 294 F.Supp. 562 (W.D. Wis. 1968).

[38]In Morrison v. City of Lawrence, 186 Mass. 456, 460, 72 N.E. 91, 92 (1904), the court noted: "The hearing afforded may be of no value if relevant evidence, when offered, is refused admission, or those who otherwise would testify in behalf of the excluded pupil are prevented by action of the [school]."

[39]See N.C. GEN. STAT. § 115-32, which grants subpoena power to school boards for "all matters which may lawfully come within the powers of the board..." Compar N.Y. EDUCATION LAW § 2215(12) (McKinney 1953), granting district superintendents subpoena power for obtaining testimony in a case or proceeding heard by the Commissioner of Education.

Legally, schools are not required to subpoena witnesses for students in expulsion cases.[40] However, if the school has subpoena powers, any witnesses whose testimony seems necessary to a proper investigation of the matter, including those requested by the student, should be compelled to attend.

Considerable controversy attends the question whether confrontation and cross-examination are rights that must be extended to the student. In the several high school expulsion cases that have commented on the student's right to cross-examine witnesses, courts have said that the school need not grant this right.[41] Courts ruling on this question in college expulsion cases also have found the right not to be a requirement of due process. However, many colleges and some public schools do permit confrontation and cross-examination in student disciplinary cases. In the classic Dixon case, the United States Court of Appeals for the Fifth Circuit held that a full-dress judicial hearing with the right to cross-examine witnesses is not required because (1) it was impractical to carry out, and (2) the attending publicity and disturbance of university activities may be detrimental to the educational atmosphere.[42] This is the position most generally taken by the courts in cases in which the issue has been raised.

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[40]See Abbott, Due Process and Secondary School Dismissals, 20 CASE W. RES. L. REV. 378, 395 (1969), in which he argues for the student's right to compel the attendance of witnesses.

[41]See, e.g., Hobson v. Bailey, 309 F.Supp. 1393 (W.D. Tenn. 1970); Davis v. Ann Arbor Pub. Schools, 313 F.Supp. 1217 (E.D. Mich. 1970); Whitfield v. Simpson, 312 F.Supp. 889 (E.D. Ill. 1970); and "TT," an infant, by her guardian v. Board of Education of Franklin Township, Decision of N.J. Comm'r. of Educ., December 1, 1970. But see R. Ackerly, THE REASONABLE EXERCISE OF AUTHORITY 15 (1969), who says that the accused must be allowed to cross-examine witnesses, and Tibbs v. Bd. of Educ. of Franklin Township, 114 N.J. Super. 287, 276 A2d 165 (1971), where court set aside expulsion for failure to produce accusing witnesses for testimony and cross-examination even though principal said student witnesses were afraid to testify because of fear of reprisal.

[42]Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 159 (5th Cir. 1961). Accord, Wong v. Hayakawa, No. 50983 (N.D. Cal. 1969); State ex rel. Sherman v. Hyman, 180 Tenn. 99, 109, 171 S.W.2d 822, 826 (1942).

Speaking of these cases and the university setting, Professor Wright suggests that the reasons given for limiting or denying confrontation and cross-examination are not "wholly persuasive."[43] I believe they are equally unpersuasive in a secondary school expulsion proceeding. Since there is no right to a public hearing in a student disciplinary proceeding, there is little reason to think the hearing will create undue publicity and disturbance. The argument that cross-examination is impractical to carry out perhaps has more substance, particularly, if the examination is not conducted by legal counsel or someone trained in the technique.

The courts in Dixon and in other cases have contended further that cross-examination will make the hearing unnecessarily legalistic, moving it toward the full-dress judicial proceeding schools wish to avoid. The schools have good reasons for wanting to minimize the adversary aspects of the hearing and to keep it from becoming any more like a criminal prosecution than necessary. Ideally, the hearing should be a conference, the major objective being to find ways to help the student correct his conduct so that he can fully participate in the school program. Cross-examination may make retaining the rehabilitative aspects of the hearing more difficult. Moreover, many student and teacher witnesses will find the procedure upsetting.

Nevertheless, expulsion will in many cases hinge on the credibility of the testimony, making cross-examination essential to a fair hearing. Due process will then require questioning of witnesses. Beyond the strictly legal question, the school's interest in obtaining the most accurate account of the student's conduct before it takes action will be enhanced by giving both the student and the school the right to cross-examine any witness testifying at the hearing.

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[43]Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1076 (1969). See also Buss, Procedural Due Process for School Discipline: Probing the Constitutional Outline, 119 U. Penn. L. Rev. 545, 593 (1971).

Professor Clark Byse of the Harvard Law School suggests an alternative to complete rejection or full granting of confrontation and cross-examination in student disciplinary hearings. He proposes that confrontation and cross-examination be required not routinely but only when they are "the conditions of enlightened action."[44] Thus if the expulsion proceeding hinges on the credibility of testimony received, confrontation and cross-examination would be "conditions of enlightened action." When so justified, both should be required as a matter of good school policy and as a condition of due process.

Self-Incrimination

School disciplinary proceedings, at both the high school and the university levels, have generally been viewed as administrative proceedings that are not sufficiently criminal in nature to require the Fifth Amendment's protection against self-incrimination. This view distinguishes school disciplinary proceedings from juvenile court proceedings, in which the United States Supreme Court has held the protection against self-incrimination to be a requirement of due proc[45]

The question of self-incrimination usually arises when a student's conduct may result in his being charged with both a school offense and the violation of a criminal law. In situations in which both criminal and disciplinary proceedings are pending, students have contended that they cannot be compelled to testify in the disciplinary hearing because the testimony, or leads from it, may be used to incriminate them at the later criminal proceeding. This objection, based on the Fifth Amendment's protection against self-incrimination,

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[44]Byse, The University and Due Process: A Somewhat Different View, 54 AAUP BULL. 143, 145 (1968).

[45]In re Gault, 387 U.S. 1, 47 (1967).

has been raised unsuccessfully in several college cases. In Furutani v. Ewigleben,[46] students sought to enjoin expulsion hearings until after criminal actions arising out of the same activities had been completed. They argued that they would be forced to incriminate themselves to avoid expulsion and that their testimony would then be offered against them in the subsequent criminal proceedings. In denying their request, the court held that the students could object at the criminal trial to incriminating statements made at the expulsion hearings and that no Fifth Amendment right had been jeopardized. The court based its ruling on Garrity v. New Jersey,[47] a case in which compulsory testimony at a state investigation was held inadmissible in a subsequent criminal prosecution arising from the investigation.

The Furutani decision represents the consensus of courts today.[48] (However, courts in at least two cases, one a high school case involving expulsion for cheating, have suggested that the privilege against self-incrimination would be available at a hearing on expulsion.[49]) Protection against self-incrimination clearly is not a basis for postponing expulsion hearings

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[46] 297 F.Supp. 1163 (N.D. Cal. 1969). See also, Johnson v. Bd. of Educ. of City of N.Y., 62 Misc.2d 929, 310 N.Y.S.2d 429 (Sup. Ct. 1970) (fact that students could not testify on ground that doing so would forfeit privilege against self-incrimination with respect to criminal proceedings arising from the same incident did not support contention that they could not get a fair hearing where others could testify and students could obtain counsel and cross-examine witnesses). And also, In re Manigaulte, 63 Misc.2d 765, 313 N.Y.S.2d 322 (Sup. Ct. 1970) (board not prohibited from conducting disciplinary hearing while student was under criminal charges based on same conduct even though student might have to testify to defend himself).

[47] 385 U.S. 493 (1967).

[48] See Madera v. Board of Educ., 386 F.2d 778, 780 (2d Cir. 1967), cert. denied. 390 U.S. 1028 (1968). For cases at the college level, see Goldberg v. Regents of Univ. of Cal., 248 Cal. App.2d 867, 57 Cal. Rptr. 463 (1967); and GENERAL ORDER ON JUDICIAL STANDARDS, 45 F.R.D. 133, 147 (W.D. Mo. 1968).

[49] Goldwyn v. Allen, 54 Misc.2d 94, 99, 281 N.Y.S.2d 899, 906 (Sup. Ct. 1967) a State ex rel. Sherman v. Hyman, 180 Tenn. 99, 109, 171 S.W.2d 822, 826 (1942).

until criminal trials are completed.[50] It is also clear that a Miranda-type of warning is not applicable to a school investigation of alleged misconduct.[51]

Sufficiency of Evidence

Disciplinary action may not be taken if it is not supported by substantial evidence. This is one of three minimal due process requirements, along with notice and a hearing in cases of severe discipline.[52]

An example of insufficient evidence is illustrated by a case in which the school had accused a student of cheating by deliberately folding a sheet of information into her blotter for use in a closed-book history exam. The student denied that she intended to cheat, saying that the alleged crib sheet was study notes accidentally folded into her blotter. The court, in granting mandamus, directed the school to issue her diploma on the basis that the evidence was insufficient to prove cheating. Thus a school cannot expel a student without enough evidence to prove the charge it makes against him. To do so would be arbitrary and capricious and therefore unlawful.[53]

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[50]See Grossner v. Trustees of Columbia Univ., 287 F.Supp. 535 (S.D.N.Y. 1968). See also Kalaidjian, Problems of Dual Jurisdiction of Campus and Community, in STUDENT PROTEST AND THE LAW 136-39 (G. Holmes ed. 1969).

[51]A Miranda-type warning is a reminder to suspects of crime that they may refuse to make self-incriminating answers to questions and may have the assistance of a lawyer in answering questions. See Buttny v. Smiley, 281 F.Supp. 280, 287 (D. Colo. 1968) and Goldwyn v. Allen, 54 Misc.2d 94, 281 N.Y.S.2d 889 (Sup. Ct. 1967), both of which rejected the applicability of Miranda to expulsions in secondary and higher education.

[52]Sill v. Pennsylvania State Univ., 318 F.Supp. 608 (M.D. Pa. 1970); Ryan v. Bd. of Educ., 124 Kan. 89, 257 P. 945 (1927).

[53]Most states have an administrative procedure act that sets out the requirements for judicial review of final administrative decisions. If the decision--in our case, a school expulsion--is unsupported by competent, material, and substantial evidence, the decision will be reversed. In a Florida case, an expulsion was vacated where the Board gave as its reason for expulsion no more than that the student was "guilty of the misconduct as charged." This provided an insufficient basis for review and consequently violated due process and the state Administrative Procedure Act. Veasey v. Bd. of Public Instruction, 247 So.2d 80 (Fla. Dist. Ct. of App. 1971).

Mass Hearings

On the college level, school authorities have sometimes found it desirable or necessary to conduct expulsion hearings in which charges were considered simultaneously against large numbers of students. The same may be true in high schools when mass violations of school rules occur. This procedure was recently upheld when the University of Colorado tried sixty-five students who had locked arms to deny access to university buidlings.[54] The students admitted acting as a group, and the court held that they could be tried as a group. One writer made the following observation on the constitutionality of this procedure:

> There certainly is no legal impropriety in holding a joint trial, and I don't believe that even with the assistance of counsel the student could constitutionally insist upon a separate trial, despite the possibility that a kind of prejudice may occur because of testimony in one part of the trial that relates to another student.[55]

Double Jeopardy

Students have argued that the Fifth Amendment's prohibition against double jeopardy prohibits the application of both criminal and administrative sanctions against the same individual for the same offense. This claim has no legal basis. As Professor Wright notes, "...claims of 'double jeopardy' are not uncommon, but are utterly without merit."[56]

Nor is there basis for a double-jeopardy claim against punishing a student twice for the same offense. In a recent Ohio case, a student was suspended by the principal for ten days. When the boy returned to class following the ten-day suspension, he was expelled by the superintendent for the remainder of the

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[54]Buttny v. Smiley, 281 F.Supp. 280 (D.Colo. 1968).

[55]Van Alstyne, op. cit. supra note 3, at 206.

[56]Wright, op. cit. supra note 43, at 1073. See also GENERAL ORDER ON JUDICIAL STANDARDS, 45 F.R.D. 133 147-48 (W.D. Mo. 1968).

semester. The Ohio Appellate Court found no question of double jeopardy involved in the case, observing that suspension and expulsion are separate punishments: suspension is an immediate response by the principal to the misconduct, whereas expulsion is a sanction reserved to the superintendent after he reviews the offense.[57]

Public Hearing

I know of only one secondary school case that has ruled on the question of a student's right to a public hearing. The court held that a student had no right to an open hearing where state law authorized the school committee to go into executive session whenever matters to be discussed, if made public, might adversely affect any person's reputation.[58]

At the college level, however, the question of the student's right to a public hearing has been litigated several times. Courts uniformly have held that a hearing in open court is not required for compliance with procedural due process.[59] Thus fairness does not require that the disciplinary proceeding be open to the public.

Transcript of Hearing

In several college cases, courts have considered whether the school must provide a transcript of the hearing when the student requests one. Although the cases are divided, it is clear that if an appeal is to be taken, a transcript must be available unless the appeal is to be de novo, with all evidence presented again. The easiest way to handle this problem is to tape-record the proceeding.

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[57] State ex rel. Fleetwood v. Bd. of Educ., 20 Ohio App.2d 154, 252 N.E.2d 318 (1969).

[58] Pierce v. School Comm., 322 F.Supp. 957, 961 (D. Mass. 1971).

[59] See Moore v. Student Affairs Committee of Troy State Univ., 284 F.Supp. 725, 731 (M.D. Ala. 1968); Zanders v. Louisiana State Bd. of Educ., 281 F.Supp. 747, 768 (W.D. La. 1968); GENERAL ORDER ON JUDICIAL STANDARDS, 45 F.R.D. 133, 147 (W.D. Mo. 1968). See also Wright, op. cit. supra note 43, at 1079-80.

If an appeal is taken, the tape can be reduced to writing.[60]

Appeal

Most state statutes either require the school board to expel the student or permit him to have his expulsion reviewed by the school board,[61] but he has no constitutional right to appeal to the school board. Most states also have an administrative procedure act that permits a judicial appeal from a final administrative decision. If the complainant thinks that he has been denied a statutory or constitutional right or that the administration or school board has acted arbitrarily or capriciously, he may appeal to a state court.[62] Most challenges to student discipline actions, however, have arisen in the federal courts under section 1983 of the Civil Rights Act of 1871.

Immediate Suspension

One last point merits discussion. Occasionally a school administrator may contemplate suspending a student summarily pending a later hearing to consider imposing a long-term suspension or permanent expulsion from the school. Immediate suspension is seldom warranted, but it can be justified in those rare instances when it offers an effective means of both communicating to the student that his conduct was unacceptable and getting his parents immediately involved by way of a conference to recognize and accept a greater responsibility in helping the student meet school standards for acceptable conduct. The only other justifiable use of an immediate suspension is when the student's continued presence on the school grounds would endanger his safety or well-being, the safety or well-being of other members of the school

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[60] In Pierce v. School Comm., 322 F.Supp. 957, 971 (D.Mass. 1971) the district court held that the student's constitutional rights had not been violated by refusing to allow him to make either a stenographic or mechanical recording of the hearing.

[61] See, e.g., N.C. Gen. Stat. § 115-34 (1955).

[62] See, e.g., N.C. Gen. Stat. § 143-307 (1953).

community, or the proper functioning of the school. In any situation, the suspension should be as short as possible.[63]

An immediate suspension is limited to a short period of time. If it were not so limited, a school could use the suspension power to effect an expulsion without giving the student a hearing and complying with other requirements of due process. In the cases involving immediate suspensions of high school students in which the actions were challenged for denial of procedural due process, courts have upheld ten-day suspensions that were imposed without specification of the charges or a hearing on the misconduct.[64]

In a college case in which students challenged the constitutionality of a suspension pending a hearing on expulsion, the court declared a thirteen-day suspension without a hearing to be too long a delay and therefore a denial of due process.[65] This case involved immediate suspensions of students for the violent disruption of the Madison campus of the University of Wisconsin. The university submitted numerous affidavits to show that the continued presence of the suspended students on the campus would endanger both persons and property. The court accepted this testimony, but held that there was no showing that it would have been impossible or unreasonably difficult for the regents, or an agent designated by them, to provide a preliminary hearing before the interim suspension order.

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[63] Conyers v. Glenn, 243 So.2d 204 (Fla. Dist. Ct. of App. 1971).

[64] Baker v. Downey City Bd. of Educ., 307 F.Supp. 517, 522 (C.D. Cal. 1969), Banks v. Board of Pub. Inst. of Dade Co., 314 F.Supp. 285 (S.D. Fla. 1970) vacated 28 LE.2d 526 (1971); and Hernandez v. School Dist., 315 F.Supp. 289 (D. Colo. 1970) Farrel v. Joel, 437 F.2d 160 (2nd Cir. 1971);

[65] Stricklin v. Regents, 297 F.Supp. 416 (W.D. Wis. 1969), appeal dismissed for mootness, 420 F.2d 1257 (7th Cir. 1970).

CONCLUSION

The evolution of student rights and the judicial protection of these rights will be regarded by many at best as a mixed blessing and at worst as a serious interference with internal school discipline and affairs. It should be remembered, however, that the schools must have and do have plenary authority to regulate conduct calculated to cause disorder and interfere with educational functions. The primary concern of the courts is that students be treated fairly and accorded minimum standards of due process of law.

In light of the changing nature of due process in this area, the need to understand students, and the importance of avoiding disruption of school operations, I recommend that schools do these things:

1. Adopt a grievance procedure for students and faculty.

2. Adopt written regulations on student conduct. These regulations should specify the potential penalty for a violation. They should be worked out in consultation with principals, who should have a checklist of things to do before they take action. When completed, the regulations should be made public and widely distributed.

3. Adopt written procedures for handling discipline cases.

4. Develop an emergency plan to deal with school disorders.

Times change. The absolute control once exercised by school boards and school administrators over the operation of schools is gone. We have a new ball game, with part of the power once held by boards and administrators now held by teachers and students. We need to recognize this fact and then ask ourselves in what ways our relationships with students, parents, teachers, and administrators have changed, so that we are not fooled by our own rhetoric as we work with these groups to make our schools more responsive to community needs and to produce a graduate better trained to accept responsibility in today's society.